IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 240 of 1998
WITH
CRIMINAL APPEAL NO.162 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SARDARSINH KESHRISINH PARMAR

Appearance:

1. Criminal Appeal No. 240 of 1998
ND GOHIL,APP for Petitioner No. 1
MR PM VYAS for Respondent No. 1

2. Criminal Appeal No.162 of 1998
MR PM VYAS for Appellant
MR ND GOHIL,APP for Respondent.

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 17/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

1. The accused Sardarsinh Keshavsinh Parmar was tried for committing murder of complainant Pratapsinh Motisinh, by the learned Addl. Sessions Judge, Sabarkantha at Himatnagar in Sessions Case No.48 of 1997. At the end of the trial, the learned Judge, by his judgment and order dated 17.1.1998, acquitted the accused for offence punishable under sections 302 and 504 of IPC. The learned Judge, however, convicted the accused for offence punishable under section 304 Part I of IPC and sentenced him to suffer R.I. for ten years and to pay a fine of Rs. 500/-, in default, to undergo further R.I. for three months.

2. The State has filed Criminal Appeal No.240 of 1998 challenging the order of acquittal of the accused for offence punishable under section 302 of IPC while Criminal Appeal No. 162 of 1998 is preferred by the accused challenging his conviction for offence punishable under section 304 Part I of IPC.

Both the appeals are heard together and disposed of by this common judgment.

3. The incident in question took place on 8.1.1997 at about 9.30 p.m. when the complainant was called by the accused at his residence. It appears that the accused was fully drunk at that time. He insisted the complainant to accompany him to bring his wife back. The complainant declined to accompany the accused as he was busy with his agricultural work. It appears that on getting the said reply from the complainant, the accused lost his temper and poured kerosene from the kerosene tin on the complainant and took out a burning log from hearth and set him ablaze. The complainant immediately came out from the house with burning clothes. PWs who were present, extinguished the fire by throwing dust on him. The complainant who sustained severe burn injuries was admitted in Civil Hospital, Himatnagar. He thereafter succumbed to the injuries on the next day i.e. on 10.1.1997.

4. It appears that on 9.1.1997 at about 1.00 a.m., on getting telephonic Vardhi, PSI rushed to the Civil Hospital and recorded complaint of the deceased at Ex. 37. On the basis of the same, FIR was registered and investigation commenced. Ibrahim S.Mansuri, Deputy Mamlatdar, Civil Supplies Department, Himatnagar, on

getting yadi Ex. 31 from Himatnagar Police Station, went to Civil Hospital and recorded dying declaration of the deceased at Ex. 32.

5. On completion of investigation, the accused was charged for offences punishable under sections 302 and 504 of IPC. After the case for trial was committed to the Court of Sessions, the learned Trial Judge framed charge at Ex.4. The accused pleaded not guilty to the same and claimed to be tried. In his further statement recorded under section 313 of the Code of Criminal Procedure, the accused came out with a case that he has been falsely involved on account of some land dispute. He has stated that while the complainant was cooking vegetables, stove was burst and, therefore, he sustained injuries.

6. The learned Trial Judge, after appreciating the evidence on record, found that the prosecution has established involvement of the accused in the offence in question. However, considering the facts and circumstances of the case, convicted him of the offence punishable under section 304 Part I of the IPC instead of section 302 IPC. Hence these two appeals.

7. We have heard Mr. P.M.Vyas, learned Counsel for the accused and Mr. N.D.Gohil, learned APP for the State. We have also gone through the evidence on record.

8. PW 1 Ex.10 Dr.R.D.Parikh, Medical Officer, Civil Hospital who has performed post-mortem examination of the deceased found the following external injuries.

(1) Deep burns on forehead, both cheek, lips, superficial burns on whole face.
(2) Deep burns on the anterior aspect of neck.
(3) Scalp hair: Occipital & Temporal parietal region burnt.
(4) Deep burns on anterior and posterior aspect of chest.
(5) Deep burns on the anterior and posterior surface of abdomen.
(6) Superficial burns on pelvic region.
(7) Deep burns on both arms, forearms, axilla and hands.
(8) Superficial burns on the dorsal aspect of all fingers.
(9) Deep burns on both thighs and gluteal region.
(10) Deep burns on both legs. Superficial burns on the lateral aspect of left leg.
(11) Superficial burns on the dorsal aspect of both

feet.

Dr.Parikh also found the following internal injuries.

Brain congested, deep burns on anterior and posterior aspect of chest. Lungs and other parts of the body were congested.

Regarding cause of death, Dr. Parikh has opined that the death was due to shock due to extensive burns.

In view of the above medical evidence, it is clear that the deceased died a homicidal death and the same is also not disputed before us.

9. On the question of involved of the accused, the prosecution has mainly placed reliance on the evidence of Savita, PW 6 Ex.27, wife of the deceased, complaint Ex. 16 and dying declaration Ex.32 of the deceased.

10. Savita, in her evidence, has stated that on the day of the incident, she and her husband were preparing for going to bed after having their meals. At that time, Maghiben, sister of the accused came to their residence and informed that Sardarsinh (accused) was calling them. With reluctance, Savita and her husband Pratapsinh went to the house of the accused. One Agarsinh Pujsinh Parmar who met them on the way also accompanied them. On reaching the house of the accused, the accused asked the deceased to accompany him for bringing his wife back. The deceased declined to accompany him. Thereupon, the accused lost his temper and poured kerosene from the tin on the deceased and took out a burning log from the hearth and set the deceased ablaze. She has further stated that the accused thereafter pushed her husband and threw him out of his house. Her husband sustained burn injuries and flames came out from his clothes. Many people gathered there. They extinguished the fire by throwing dust on him. She thereafter became unconscious on seeing the entire incident. A jeep was called from Tajpur and her husband was removed to Civil Hospital, Himatnagar. Her husband was conscious at that time.

In the cross examination, she has admitted that the accused and her husband were friends. She has also admitted that Jashiben,wife of the accused had left the house of the accused more than 13 years back and there was no relationship between them since then. She denied the suggestion that her husband's brothers are trying to take back lands from the accused. She also denied the

suggestion that her husband had committed suicide.

11. Ibrahim S.Mansuri, Ex.13, Executive Magistrate recorded dying declaration of the deceased at Ex. 32. According to him, on getting yadi Ex.31 from Himatnagar Police Station, he went to Civil Hospital. He met Residential Doctor. He also asked the wife of the deceased to go out and after introducing himself, he recorded the dying declaration of the deceased. In dying declaration Ex. 32, the deceased has stated that he was called by Sardarsinh Parmar at about 9.30 p.m. He thereafter poured kerosene on him and set him ablaze. He thereafter started burning and came out of the house and the people who had gathered there extinguished fire and thereafter he was removed to Civil Hospital. He has further stated that the accused had consumed liquor. He has also stated that the accused is not relative and no quarrel had taken place with him. The deceased has given identical version in the complaint at Ex. 62 recorded by police. In the complaint, he has alleged that the accused was fully drunk and was abusing him. He thereafter started quarrelling with him and burnt him. He gave more details compared to what he has stated in dying declaration Ex.32. However, he has remained consistent on material part of the incident.

12. Thus, from the complaint Ex. 16, dying declaration Ex. 32 and from the evidence of Savita Ex. 27, it is clear that consistent version is given against the accused wherein the deceased and his wife have involved the accused in the commission of offence. From the same, it is clear that the accused who was fully drunk and insisting the deceased to accompany him for calling back his wife, on deceased refusing to accompany him, accused picked up quarrel with the deceased and set the deceased ablaze. The medical evidence totally confirms the version given by the deceased and his wife Savita. The learned Trial Judge, considering the above aspect, has rightly held accused liable for causing burn injuries to the deceased. Taking into consideration the fact that the accused and the deceased being friends and, therefore, the deceased was called at the residence of the accused at late hours in the night and that too, to accompany him to call back his wife, the reluctance of the deceased and starting of quarrel, the accused to have lost total control and that too, he was in drunken condition, causing burn injuries, are the circumstances, in our opinion, which would lead us to the only conclusion that the accused cannot be convicted for offence punishable under section 302 of IPC. In our opinion, the learned Judge was justified in convicting the accused for offence under section 304 Part I of IPC.

We accordingly confirm the conviction of the accused for offence punishable under section 304 Part I of IPC.

13. As far as the sentence part is concerned, having gone through the jail record, it appears that the accused by this time has already undergone more than six years of imprisonment. The sentence of ten years R.I. awarded by the learned Trial Judge appears to be too harsh particularly in view of the fact that the incident in question happened all of a sudden when the accused was fully drunk. The accused is the only bread earner in the family and having aged parents. Therefore, the ends of justice would be met if we impose the sentence already undergone by the accused.

14. In the result, Criminal Appeal No. 240 of 1998 filed by the State of Gujarat is dismissed. Criminal Appeal No. 162 of 1998 filed by the accused Sardarsinh Kesharsinh Parmar is partly allowed. The judgment and order of conviction passed by the learned Trial Judge convicting the accused for offence punishable under section 304 Part I of IPC is confirmed. However, the sentence of R.I. for 10 years imposed by the learned Trial Judge is modified to the sentence already undergone by the accused. As far as sentence of payment of fine of Rs.500/- is concerned, it is reduced to Rs. 250/-, in default, to undergo further R.I. for 15 days.

Order accordingly.

(Kshitij R.Vyas,J.)

(A.L.Dave,J.)

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